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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,040	10/09/2001	Robert S. Kody	56685US002	7546
32692	7590 12/22/2003		EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY			THOMPSON, CAMIE S	
PO BOX 334 ST. PAUL,	427 MN 55133-3427		ART UNIT	PAPER NUMBER
ŕ			1774	

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.								
Examiner   Carnie S Thompson   1774	51	•	Application No.	Applicant(s)				
Carrile S Thompson   1774	·		09/974,040	KODY ET AL.	٠.			
The MALING DATE of this communication app are on the cover sheet with the correspond new address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION.  Estatebook of the many be evaluated which provisions of 3 CFR 1.138(e). In a event, however, may a reply be limitely filled to the provision of the provision of 1 CFR 1.138(e). In a event, however, may a reply be limitely filled to the provision of the			Examiner	Art Unit				
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION, address of the process the late of the proteodors of TCFR 1.13(a). In a event, however, may a reply be timely filed after SIX (8) MONTHS from the mailing date of this communication.  **The period for reply specified does is less than this; of 3 (25), as, a reply within the clautility minimum of thinty (20) days will be considered timely.  **The period for reply specified does is less than this; of 3 (3), as, a reply within the clautility minimum of thinty (20) days will be considered to reply will be received by the Office also the star of the remains and the remaining date of this communication.  **Fallow to reply within the set or estanciate pixel for reply will by residuation, cause the a spillation to become AEANDONED; rest u.S. c. § of the communication is reply within the set of the communication.  **Any reply received by the Office later and a fore remains after the mailing date of this communication, even if timely filed, may reduce a my consideration.  **Any reply received by the Office later and a fore remains after the mailing date of this communication, even if timely filed, may reduce a my consideration.  **The period of Claims**  **The period of Claims**  **The period of Claims**  **The period of Claims**  **Allow Claims**  **Claims**  **The process of the period of Claims**  **The period of Claims**  **The specification is objected to by the Examiner.**  **The specification is objec			· •					
THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be validable under the provisions of 37 CPR 1.13(d), in no event, however, may a reply be timely fied after SX (S) MONT ITS from the mailing date of this communication, apply within the studiety principal of the communication.  Fallow 5X (S) MONT ITS from the mailing date of this communication, apply within the studiety principal days that will be considered firmly.  Fallow 5X (R) MONT ITS with the mailing date of this communication, apply within the studiety principal days be dealed from the mailing date of this communication, even if timely filed, may reduce any substance. Such as a substance of the communication, even if timely filed, may reduce any substance. Such as a substance of the communication, even if timely filed, may reduce any substance. Such as a substance of the communication, even if timely filed, may reduce any substance. Such as a substance of the communication, even if timely filed, may reduce any substance. Such as a substance of the communication, even if timely filed, may reduce any substance. Such as a substance of the communication, even if timely filed, may reduce any substance. Such as a substance of the communication of the communication.  1) This action is FINAL.  2) This action is finAL.  2) This action is condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1,2.5-15.17-32,36-38 and 45-49 is/are pending in the application.  4) Of the above claim(s) 3,4.16.33-35 and 39-44 is/are withdrawn from consideration.  5) Claim(s) 1,2.5-15.17-21,25-28.30.31 and 45-49 is/are rejected.  7) Claim(s) 1,2.5-15.17-21,25-28.30.31 and 45-49 is/are rejected.  8) Claim(s) 1,2.5-15.17-21,25-28.30.31 and 45-49 is/are rejected.  8) Claim(s) 1,2.5-15.17-21,25-28.30.31 and 45-49 is/are rejected.  9) The drawing(s) filed on 1,2.5-15.17-21,25-28.30.31 and 45-49 is/are rejected.  10) The gravit			ars on the cover sheet with the	correspond nce address				
1) Responsive to communication(s) filed on	THE MAI  - Extension after SIX (  - If the peric  - If NO peric  - Failure to  - Any reply earned pai	LING DATE OF THIS COMMUNICATION.  s of time may be available under the provisions of 37 CFR 1.13  b) MONTHS from the mailing date of this communication.  d for reply specified above is less than thirty (30) days, a reply  defor reply is specified above, the maximum statutory period w  reply within the set or extended period for reply will, by statute,  eceived by the Office later than three months after the mailing	66(a). In no event, however, may a reply be ti within the statutory minimum of thirty (30) da will apply and will expire SIX (6) MONTHS fror cause the application to become ABANDON	mely filed  ys will be considered timely.  the mailing date of this communication.  ED (35 U.S.C. & 133)				
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#### **DETAILED ACTION**

- 1. Applicant's amendment and accompanying remarks filed October 16, 2003 have been acknowledged.
- 2. Examiner acknowledges amended claims 1, 5, 19, 25, 29, 30, 31, 46, 48 and 49.
- 3. Examiner acknowledges cancelled claims 3, 4 and 33-35.
- 4. The objection to the specification is withdrawn due to applicant's amended abstract.
- 5. The rejection of claims 1-3, 5-15, 17-33, 35 and 46-49 under 35 U.S.C. 102(e) as being anticipated by Perez et al., U.S. Patent Number 6,331,343 is withdrawn due to applicant's amended claims.

#### Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 7. Claims 1-2, 5-11 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Heffelfinger, U.S. Patent Number 6,582,810.

The Heffelfinger reference discloses a breathable, elastic film. The film of the reference comprises a coextruded, monoaxially oriented microfiber layer that is stretched in the

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perpendicular direction as per instant claims 1-2 and 6(see column 1, lines 55-68, column 6, lines 18-24 and Figures 1-3 and 6). Additionally, the reference discloses that the film comprises two opposing surface wherein one surface is hydrophilic and the other surface is hydrophobic as per instant claims 1 and 7 (see column 10, lines 26-44 and column 6, line 65-column 7, line 1). The reference also discloses that he microfiber layer comprises a polypropylene as per instant claims 8 and 11 (see column 3, lines 9-13 and column 4, lines 28-64). It is disclosed in column 6, lines 25-41 that the non-microfiber layer comprises an elastomeric material as per instant claim 9. Also, the reference discloses in Figure 6 that the film comprises two layers as per instant claims 10 and 17. Column 7, lines 42-50 of the reference discloses that the film thickness is about 5-50 microns as per instant claim 18. It is also discloses in column 9, lines 46-64 that the breathable film may be laminated to one or more fibrous webs such as a meltblown web as per instant claims 19 and 20.

### Claim Rejections - 35 USC § 103

- 8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 9. Claims 1, 12-15, 21, 25-28, 30-31 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heffelfinger, U.S. Patent Number 6,582,810.

The Heffelfinger reference discloses a breathable, elastic film. The film of the reference comprises a coextruded, monoaxially oriented microfiber layer that is stretched in the

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perpendicular direction as per instant claims 1 and 27 (see column 1, lines 55-68, column 6, lines 18-24 and Figures 1-3 and 6). Additionally, the reference discloses that the film comprises two opposing surface wherein one surface is hydrophilic and the other surface is hydrophobic as per instant claim 1 (see column 10, lines 26-44 and column 6, line 65-column 7, line 1). The reference also discloses that he microfiber layer comprises a polypropylene as per instant claims 15, 25 and 28 (see column 3, lines 9-13 and column 4, lines 28-64). It is disclosed in column 6, lines 25-41 that the non-microfiber layer comprises an elastomeric material as per instant claims 13, 26 and 47. The Heffelfinger reference does not specifically disclose a nonmicrofiber layer sandwiched between two microfiber layers as per the instant claims. However, the Heffelfinger reference does disclose that the non microfiber layer may be laminated to one or more fibrous meltblown webs as shown in column 9, lines 46-65. With two fibrous meltblown webs, it would be expected that the film be sandwiched between the two fibrous webs so that the film is laminated to the webs as described in column 9 of the reference as per instant claims 12, 31-32, 45-46 and 49.

- 10. Claims 29, 32, 36-38 allowed.
- 11. Claims 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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## Response to Arguments

10. Applicant's arguments with respect to claims 1-3, 5-15, 17-33, 35 and 46-49 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (703) 305-4488. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H. Kelly, can be reached at (703) 308-0449. The fax phone number for the Group is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

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